

## CHAPTER 5. HEARING PROCEDURES

# R500-01:NR-05

5-1-1. *Definitions.* The following terms are defined for purposes of this regulation.

- a. The word “shall” is always mandatory and not merely advisory.
- b. “*Commission*” means the Little River Band Natural Resource Commission.
- c. “*Contested case*” means any request for a hearing brought by a person appealing:
  1. a license or permit suspension, denial, revocation or other action; or
  2. the issuance of a citation for violation of the Ordinances or Regulations promulgated by the Natural Resource Commission; or
  3. the issuance of Commission regulations, emergency regulations, orders, or directives alleged to be, unconstitutional, vague, beyond the scope or authority of the Commission, or for other like reasons.
- d. “*Hearing*” means a contested case hearing before the Natural Resource Commission.
- e. “*Hearing Officer*” means the presiding officer responsible for conducting a Commission hearing. The Hearing Officer shall be the Chairperson of the Commission or another Commissioner designated by proper motion of the Commission.

5-1-2. *Scope of Regulation.* This regulation shall apply in every contested case hearing that is permitted or required by the Natural Resource Commission Ordinance.

5-1-3. *Public Hearing.*

- a. All hearings of the Commission shall be open to the public, unless, for good cause shown, the Commission, by properly adopted motion, determines the hearing, or any portion thereof, shall be conducted in closed session.
  1. For any hearing, or portion of a hearing, closed by motion of the commission, legal counsel to the Commission shall certify in writing that, in their opinion, the hearing legally may be closed to the public and shall present the reasons for support of the closure.
  2. A copy of such certification shall be entered into the record of the proceeding.
- b. Insofar as possible, the Commission shall hold hearings on the weekday generally established for Commission meetings; and the Commission shall provide public notice of the hearing on the Commission’s agenda.
- c. If a scheduled hearing is cancelled or postponed to a later date, the Commission shall provide as much timely notice as possible to the plaintiff and respondent parties to the proceeding; and such postponement shall be noted on the Commission’s next agenda, together with the tentative date, time, and place of the rescheduled hearing.

5-1-4. *Filing of Request for a Hearing.* The filing of any submission sufficient to trigger the a hearings process of the Commission is complete upon the Commission when the Commission receives, either by mail, in-hand delivery, or other means of delivery sufficient to serve notice upon the Commission, a submission or paper requesting a hearing.

- a. The Commission shall afford an opportunity for hearing without undue delay.

5-1-5. *Notice of Hearing.* The Commission shall serve notice up all persons necessary to the hearing.

- a. All parties to any contested case shall be given reasonable notice of the hearing, but in no case less than 14 days notice.
- b. Persons entitled to notice of a Commission hearing shall be timely informed of the following:
  1. Date, time, place, and nature of the hearing; in fixing the time and place of the hearing, the Commission shall give due regard to the convenience and necessity of the parties or their representatives.

2. Legal authority and jurisdiction under which the hearing is to be held.
  - c. Notice of the hearing may be effected by
    1. in-hand delivery of LRB Enforcement Officers, or other person certified to do so by the Natural Resource Commission;
    2. Via certified mail, return receipt requested; or
    3. Substitute service, by publication for a 3 consecutive publication dates in a newspaper of general circulation in or around the last known residence of the party.
- 5-1-6. *Intervention.* The Commission shall apply informal and liberal rules of intervention as fairness dictates.
- 5-1-7. *Allegation of Bias.* All hearing of the Commission shall be conducted in a unbiased manner.
- a. A Commissioner shall recuse himself from a hearing if a private party before the Commission in that hearing is related by blood as a grandfather, grandmother, father, mother, spouse, brother, sister, uncle, aunt, niece, nephew, son, daughter, or grandchild; or the person before the Commission lives in the same household as the Commissioner. This provision shall not apply to in-law relationships.
  - b. Upon a filing in good faith by a party of a timely charge of bias, or of personal or financial interest, direct or indirect, against any commissioner, requesting that that person disqualify himself, the Commissioner personally shall determine that matter on the record, or may defer the decision to a proper motion of the Commission.
- 5-1-8. *Opportunity to Be Heard.*
- a. Every party shall have the right to present their case or defense by oral and documentary evidence, to submit rebuttal evidence, to present witnesses, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
  - b. The Commission shall consider extensions of time, when requested in writing no later than 5 calendar days before the date set for the hearing, and when time, the nature of the hearing, and the public interest permit;
  - c. Private parties before the Commission may be represented by counsel at the party's own expense.
- 5-1-9. *Witness Testimony.* All witnesses shall be sworn.
- 5-1-10. *Burden of Proof.* In contested cases, the proponent of a license or permit denial or revocation, or citation shall have the burden of proof.
- 5-1-11. *Rules of Evidence.* No formal rules of evidence shall be required.
- a. The Commission shall admit oral or documentary evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
  - b. The Commission shall have the authority to exclude irrelevant, immaterial, and unduly repetitious evidence.
  - c. The Commission may utilize its experience, technical and cultural competence, and specialized knowledge in the evaluation of evidence presented to it.
  - d. No written testimony shall be admitted unless the author is available at the hearing for questioning by the Commission and the opposing party.
- 5-1-12. *Notice of Facts.* The Commission may take notice of any facts of which judicial notice could be taken, and may take official notice of general, technical, scientific, or cultural matters within the specialized knowledge of the Commissioners, or of laws, Resolutions, Ordinances, or Regulations; and nonconfidential Commission or Tribal records.
- a. Facts officially noticed shall be included and indicated as such in the hearing record.
- 5-1-13. *Rules of Procedure.* To ensure an orderly, fair, unbiased, and balanced hearing, the Commission shall require all parties and observers at any contested case hearing to observe the following rules of

decorum.

- a. The Chairperson, or Chairperson's designated representative who is conducting the hearing, shall recognize each speaker before the Commission. Persons speaking without being recognized by the officiating Commission shall be determined to be out of order, and may be requested to remove themselves from the proceeding.
- b. A speaker who has the floor shall not be interrupted during their address to the Commission.
- c. Each speaker shall state their name and address for the record and may present written comments for the record.
- d. Speakers shall address all comments to the Commission and not to the other party.
- e. The officiating Commissioner may establish additional rules of procedure for particular hearings, upon agreement by motion of the Commission.
- f. Normal civil discourse and decorum shall be observed at all times. There shall be no applause, shouting, pointing of fingers, outbursts, name-calling, or provocative speech or behavior. The presiding Commissioner shall have the authority to designate any behavior to be disruptive and to request that the person exhibiting the behavior remove themselves from the hearing, or to order the person to be removed.
- g. The Commission may vary any rule prescribed by this hearing regulation if the parties agree to such limitation or variation, or if no prejudice to either party will result.

5-1-14. *Hearings Recorded.* The Commission shall record all hearings in a form susceptible to transcription.

- a. The Commission shall make available, at a nominal cost, a copy of the record of the hearing to any party making such a request to pursue an appeal of the Commission final decision.
- b. The Commission shall make available during normal business hours a copy of the record of the hearing for inspection by any person.

5-1-15. *Decision on the Record.* All material, including records, reports, and documents in the possession of the Commission, of which the Commission avails itself as evidence in making a decision, shall be made a part of the record, and no other factual information or evidence shall be considered in rendering a decision.

- a. Every decision and order rendered by the Commission in a contested case shall be in writing and shall be accompanied by findings of fact and conclusions of law, and the reasons or basis therefore, sufficient to apprise the parties and any interested member of the public of the basis for the decision.
  1. The findings and conclusions shall be supported by and in accordance with the reliable, probative, and substantial evidence produced or entered into evidence at the hearing.
  2. The decision of the Commission shall present the appropriate rule, order, sanction, relief, or denial, as requested.
- b. The Commission shall have the authority to dispose of any contested case in the following manners, as warranted, for the expeditious disposition of any proceeding:
  1. Entry of decision by stipulation, agreed settlement, or consent order;
  2. Entry of decision of default, subject to the following conditions:
    - A. Upon failure of a respondent to appear at the time stated in the hearing notice, the plaintiff may proceed to offer evidence. The Commission may enter an Order of Default upon a proper showing of sufficient evidence.
    - B. Upon failure of the plaintiff, without just cause, to appear at the time set for the hearing, the Commission shall dismiss the proceeding with prejudice.
    - C. Within 14 calendar days, the Commission may set aside any default judgment for good cause shown.
- c. A copy of the final decision shall be delivered promptly mailed, via certified mail, return receipt requested, to each party to the proceeding or their representative

d. The commission shall provide, with the decision, written notice of the party's rights to review or appeal of the commission's decision to the Tribal Court, and of any action required and the time within which such action must be taken in order to exercise the right of appeal.

5-1-16. *Ex Parte Communication Prohibited.*

a. In any Commission matter that is set for a hearing, no Commissioners may communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice an opportunity for all parties to participate.

b. A Commissioner who receives, or who makes, or who knowingly causes to be made, a communication prohibited by this section, shall place on the public record of the proceeding:

1. All such communication that are in writing;
2. A memorandum stating the substance of all such verbal communication; and
3. A statement as to whether the Commissioner or other person believes that their judgment in matter subject to the proceeding has been tainted; and
4. Whether the Commissioner or other person involved in the proceeding intends to recuse them from active involvement in the proceeding.

c. Nothing in this section precludes any Commission from discussing any pending matter with another Commissioner, or having the aid and advice of Commission staff or legal counsel.

5-1-17. *Appeal to Tribal Court.* Any person aggrieved by final judgment or order of the Natural Resource Commission, in any case, shall entitled to appeal to the Tribal Court, provided that a notice of appeal is filed, in writing, with the Clerk of the court within 10 days after the Commission judgment is entered.

5-1-18. *Stay of Commission Decision.* Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Commission. The Commission may grant a stay upon appropriate terms during the pendency of an appeal.

5-1-19. *Documents to Be Forwarded to Tribal Court on Appeal.* The Commission, upon receipt of notice by the Tribal Court Clerk that an appeal has been filed, shall cause to be copied and to be submitted the complete record of the Commission hearing.

5-1-20. *Tribal Court Decision.* The Tribal Court shall have jurisdiction to decide:

- a. Only relevant questions of law, interpret constitutional and statutory provisions; provided that the Court shall give substantial deference to the interpretation by the Natural Resource Commission of the Commission's Ordinances, Regulations, License, and permits;
- b. To compel Commission action unlawfully withheld or unreasonably delayed; and
- c. To hold unlawful and set aside any Commission action or findings and conclusions found to be:
  1. Arbitrary, capricious, and abuse of discretion, or otherwise unsupported by substantial evidence in the record;
  2. Contrary to constitutional right, power, privilege, or immunity;
  3. In excess of the Commission's statutory jurisdiction and authority;
  4. Without observance of procedure required by law, including any applicable procedure provided by this Regulation; or<sup>1</sup>

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<sup>1</sup> This is the end of these regulations. This subsection should probably end with a period prior to the semi-colon.